IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6013 OF 2006

Sau. Amita Arun Salvi ..Petitioner.
Vs.
Sau. Swapna Ashish Bedekar & Ors. ..Respondents.

Mr.R.S.Apte i/b A.A.Garge, advs. for the Petitioner.

Mr.Kishor Patil, adv. for the Respondent No.2.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 7, 2007.

ORAL JUDGMENT:

1. **Rule.** Rule made returnable forthwith and with consent of the learned counsel for the parties, the petition is taken up for final hearing immediately.

2. Heard the learned counsel for the parties and perused the impugned judgment passed by the district Court as well as the trial Court. The present petitioner is the plaintiff and the respondents are original defendant nos.1 and 2 respectively. Petitioner claims to have purchase a flat no.14 admeasuring 623 sq.ft. built up area in the building constructed on the land Survey No.163-1A and Survey No.164-1B at Neral, Taluka: Karjat, District: Raigad. Construction was undertaken by one Ram Mahadeo Bedekar. According to the petitioner, she purchased this property for a valuable consideration of Rs.3,50,000/-

under the registered sale deed dated 20th November, 2000. The petitioner was put in possession of the flat on 11th January, 2001 when the possession letter was given to her by the builder Ram M. Bedekar. In the record of Gram Panchayat this flat came to be recorded as House No.1847/14 with effect from 30th June, 2003. The flat was recorded in the name of the petitioner and since then she is regularly paying property tax to the Gram Panchayat. She has also taken electric meter and came to reside there. On 20th January, 2005 however, she found that the said flat was sealed at the instance of Recovery Officer of the defendant no.2, which is a co-operative bank. On inquiry, it was revealed that the respondent no.2 claimed that the said flat was mortgaged with the respondent no.2 by the respondent no.1 on 15th March, 2000. Respondent No.1 claims to be daughter in law of the builder Ram Bedekar. According to the petitioner, the respondent no.1 or the bank had no right or title over the suit property. The petitioner also filed an application for removal of the seal from the house.

3. The application was opposed by the respondents. According to them, the respondent no.1 had purchased the said flat from the builder and according to the respondent no.2 the said flat was mortgaged by the respondent no.1 with the bank after having taken a loan

of Rs.1 lac. As she had failed to repay the amount of loan, bank had filed a dispute for recovery of the amount and the Co-operative Court had passed an award in favour of the respondent no.2 and against the respondent no.1. In execution of that award, the suit flat was attached and was put to auction sale. According to the respondents, plaintiff has no right, title or interest over the suit house and in any case, the sale deed dated 20-11-2000 in her favour, being later in time than the mortgage deed executed by the respondent no.1 in favour of the respondent no.2 is not binding on the defendants .

4. The plaintiff filed a suit and on her application the learned Civil Judge directed to remove the seal of the bank. The appeal preferred by the defendants came to be allowed by the learned District Judge.

5. The learned trial Court pointed out in paragraph 11 of the order that the description of the property mortgaged to the bank, as per the mortgage deed reveals that it is situated within Gram Panchayat Neral, Ward No.6 Survey No.66-H/1-A+164/113 plot number__. The learned trial Court noted that the plot number is not shown, however, the property mortgaged is room no.14 admeasuring 492 sq.ft. situated on the second floor.

The learned trial Court noted that the suit property as per the sale deed dated 20th November, 2000 is flat no.14 admeasuring 628 sq.ft. built up area situated on second floor in the building named Samadhan Sankul bearing house no.1-B situated at Survey No.65 and H No.1, Survey No.63. The learned trial Court noted that the description of the property mortgaged with the respondent no.2 bank does not tally with the description of the property purchased by the plaintiff and, therefore, it is doubtful if the flat, which is owned by the plaintiff, was ever mortgaged with the bank. The learned trial Court also noted that the suit flat is recorded as property of the petitioner in the Gram Panchayat record. There is no such entry in favour of the defendant nos.1 or 2. The learned trial Court also noted that neither the name of the building in which the flat, which is claimed to have been mortgaged with the bank, is situated, is mentioned in the mortgage deed nor the plot number on which that building is constructed is mentioned. With these observations, the learned Civil Judge Junior Division allowed the application filed by the petitioner and directed to open the seal of the flat and to restore the possession to the plaintiff pending the decision of the suit.

6. The respondent no.2 bank filed miscellaneous

civil appeal no.23 of 2006 before the District Court, Raigad challenging the order of the trial Court. The appeal was allowed. The learned District Judge only observed that the mortgage deed in favour of the bank was prior in time than the sale deed executed by the deceased Ram Bedekar in favour of the plaintiff. The learned District Judge also noted that the seal was put on the flat with consent of the defendant no.1. The learned District Judge observed that whatever objections the plaintiff had, they could be raised before the executing Court. It appears that the learned District Judge did not consider the difference in the description of the property mortgaged with the bank and the property sold to the plaintiff. According to the plaintiff, the suit flat was never mortgaged with the bank and the property, which is claimed to have been mortgaged with the bank may be totally different. In such circumstances, in my opinion, it would not be advised to push the plaintiff to the executing Court. Anyway, admittedly the seal is removed and the plaintiff is already residing in the said house. In spite of appeal being allowed by the district Court, the house was never sealed again. In such circumstances, I find that it will be unreasonable to implement the order passed by the district Court and to put the seal on the property again and to dispossess the plaintiff particularly when there is a serious

dispute about the description of the property.

7. Mr.Apte the learned counsel for the petitioner/plaintiff makes a statement before the Court that the plaintiff shall not create any third party interest over the suit flat nor she shall transfer possession of the same in favour of any third party by way of sale, mortgage, lease or licence, etc. till the disposal of the suit. The statement is accepted.

8. In view of the above circumstances, petition is allowed. Impugned judgment and order passed in Miscellaneous Civil Appeal No.23 of 2006 is hereby set aside. The order passed by the Civil Judge Junior Division on application Exhibit 5 in Regular Civil Suit No.7 of 2005 is hereby restored. The contentions of both the parties are kept open and the trial Court shall dispose off the suit on its own merits on the basis of evidence placed before it without being influenced by the observations made while deciding the application Exhibit 5 or by the observations made by this Court while deciding this writ petition.

9. Rule made absolute accordingly.

[J.H.BHATIA, J.]